



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

EC
12103
#13
Appeal
Brief

In re Application of:) Art Unit: 3728
TINA MARIE NIELSEN, et al.) Examiner:
Serial No.: 09/591,539) Troy G. Arnold III
Filed: June 9, 2000)
For: TOWEL OR BLANKET WITH)
INTEGRAL CARRYING CASE)

APPEAL BRIEF

1. Real Party in Interest:

The real party in interest are the applicants, Tina Marie Nielsen and Larry M. Nielsen.

2. Related Appeals and Interferences:

None.

3. Status of Claims:

Claims 1-14 have been canceled.

Claims 15-28 are pending in the application.

Claims 15-28 were rejected in a Final Office Action dated August 9, 2002.

A Notice of Appeal was filed on November 13, 2002. Applicants are appealing the rejection of claims 15-28.

4. Status of Amendments:

No amendments have been filed subsequent to final rejection.

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5. Summary of the Invention:

The summary of the invention will be provided by reading the appealed claims on the specification and drawings, as follows:

15. A combination [10] of a flexible sheet [12] usable as a towel or blanket and a carrying case [20] integral with said flexible sheet [12] comprising:

a flexible, rectangular sheet [12] having first and second ends [14, 15] and first and second longitudinal edges [16, 17]; and

a flexible carrying case [20] reversible from a transport and storage mode [FIG. 5] to a use mode [FIGS. 1-4] by pulling said carrying case [20] inside out, said carrying case [20] having first and second ends [FIGS. 1 and 3-5] and front and rear walls [21, 22], said carrying case [20] being open at said first end [FIG. 5] and closed at said second end [25], said front and rear walls [21, 22] of said carrying case [20] in said transport and storage mode [FIG. 5] each having an outer surface and an inner surface, a portion of said inner surface of one of said front and rear walls [21, 22] of said carrying case [20] being permanently attached to said sheet [12] [page 3, line 25 to page 4, line 1] at a location inwardly of said first end [14] of said sheet [12] and between said first and second longitudinal edges [16, 17] of said sheet [12] [FIGS. 1 and 3], said carrying case [20] wholly containing said sheet [12] within said carrying case [20] in said transport and storage mode [FIG. 5], said sheet [12] being wholly deployed outside of said carrying case [20] in said use mode [FIGS. 1-4]

with said open first end of said carrying case facing one of said longitudinal edges [16, 17,] of said sheet [12] [FIGS. 1 and 3] and with said outer surface of said carrying case [20] forming the inner surface of a pillow case [page 5, lines 15-18].

16. The combination of claim 15 including a slip cover pocket [40] located at said first end [14] of said sheet [12], said slip cover [40] being configured to be placed over that end of a lounge chair [50] adapted to receive a user's torso.

17. The combination of claim 16 including a second slip cover pocket [42] located at said second end [15] of said sheet [12], said second slip cover pocket [42] being configured to be placed over the other end of said lounge chair [50].

18. The combination of claim 15 including at least one pocket [30, 32, 34 or 36] located adjacent each of said longitudinal edges [16, 17] of said sheet [12].

19. The combination of claim 18 wherein said pockets [30, 32] are all located substantially on said longitudinal edges [16, 17] of said sheet [12] and extend away from said sheet [FIGS. 1 and 2].

20. The combination of claim 18 wherein said pockets [34, 36] are all located inwardly of said longitudinal edges [16, 17] of said sheet [12].

21. The combination of claim 15 including carrying means [29] attached to said case [20] adjacent said open end. [See FIG. 5 and page 4, lines 11-17.]

22. The combination of claim 21 wherein said carrying means [29] is a strap.

23. The combination of claim 15 including a waterproof sheet attached to the bottom side of said flexible sheet, said waterproof sheet being substantially the same size as said flexible sheet. [See page 6, lines 1-9.]

24. The combination of claim 15 including a flap [26] extending from said rear wall [22] adjacent said open first end of said case, said flap adapted to be secured to said front wall of said case by fastener means when said sheet is stuffed inside said case for transport and storage. [See page 4, lines 5-10, and FIGS. 1, 3 and 5.]

25. A combination [10] of a flexible sheet [12] usable as a towel or blanket and a carrying case [20] integral with said flexible sheet [12] comprising:

a flexible, rectangular sheet [12] having first and second ends [14, 15] and first and second longitudinal edges [16, 17]; and

a flexible carrying case [20] reversible from a transport

and storage mode [FIG. 5] to a use mode [FIGS. 1-4] by pulling said carrying case [20] inside out, said carrying case [20] having first and second ends [FIGS. 1 and 3-5] and front and rear walls [21, 22], said carrying case [20] being open at said first end [FIG. 5] and closed at said second end [25], said front and rear walls [21, 22] of said carrying case [20] in said transport and storage mode [FIG. 5] each having an outer surface and an inner surface, a portion of said inner surface of one of said front and rear walls [21, 22] of said carrying case [20] being permanently attached to said sheet [12] [page 3, line 25 to page 4, line 1] at a location inwardly of said first end [14] of said sheet [12] and between said first and second longitudinal edges [16, 17] of said sheet [12], said carrying case [20] wholly containing said sheet [12] within said carrying case [20] in said transport and storage mode [FIG. 5], said sheet [12] being wholly deployed outside of said carrying case [20] in said use mode [FIGS. 1-4] with said open first end of said carrying case facing one of said longitudinal edges [16,17] of said sheet [12] [FIGS. 1 and 3] and with said outer surface of said carrying case [20] forming the inner surface of a pillow case [page 5, lines 15-18];

a slip cover pocket [40] located at said first end [14] of said sheet [12], said slip cover [40] being configured to be placed over that end of a lounge chair 50] adapted to receive a user's torso; and

at least one pocket [30, 32, 34 or 36] located adjacent at least one of said longitudinal edges [16 or 17] of said sheet

[12].

26. The combination of claim 25 including a second slip cover pocket [42] located at said second end [15] of said sheet [12], said second slip cover pocket [40] being configured to be placed over the other end of said lounge chair [50].

27. The combination of claim 25 including carrying means [29] attached to said case [20] adjacent said open end. [See FIG. 5 and page 4, lines 11-17.]

28. The combination of claim 25 including a flap [26] extending from said rear wall [22] adjacent said open first end of said case, said flap adapted to be secured to said front wall of said case by fastener means when said sheet is stuffed inside said case for transport and storage. [See page 4, lines 5-10, and FIGS. 1, 3 and 5.]

6. Issues:

a. Whether, under 35 U.S.C. 112, second paragraph, claims 15 and 25 contain "insufficient antecedent basis" for the limitation " 'said outer surface of said carrying case' in line 24" (sic).

b. Whether claims 15, 18, 19, 21 and 22 are unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt.

c. Whether claims 16, 17, and 25-27 are unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of

Silvestri.

d. Whether claim 20 is unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Battistella and Buhot et al.

e. Whether claim 23 is unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Terrazas.

f. Whether claim 24 is unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Battistella.

g. Whether claim 28 is unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Silvestri and Battistella.

7. Arguments:

a. As to the rejection under 35 U.S.C. 112:

Claims 15 and 25 stand rejected under 35 U.S.C. 112, second paragraph, for containing "insufficient antecedent basis" for the limitation " 'said outer surface of said carrying case' in line 24" (sic). (This limitation actually appears at line 21 of claims 15 and 25 of the application and as these claims are set forth in Appendix A.)

It is submitted that sufficient antecedent basis for this limitation is found at lines 10 to 12 of each of claims 15 and 25 wherein it is stated: "--said front and rear walls of said carrying case in said transport and storage mode each having an outer surface and an inner surface--"

b. As to the rejections under 35 U.S.C. 103:

(1) Claims 15, 18, 19, 21 and 22:

These claims stand rejected as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt. Claim 15 is an independent claim, and claims 18, 19, 21 and 22 are dependent claims that ultimately depend from claim 15.

Since Wade is a design patent and its drawings do not contain reference numbers, applicants have attached hereto, as Appendix B, a copy of Wade marked-up with reference numbers in order to be able to more clearly discuss various features of Wade. Elements of Wade corresponding to elements of applicants' invention have been given the same reference numbers as those used in applicants' specification and drawings.

Wade describes a combined fitted lounge chair cover 12, cover face cloth 60, and tote bag 20. Cover 12 has first and second ends 14 and 15, and first and second longitudinal edges 16 and 17. A pocket 30 is located adjacent longitudinal edge 16.

Tote bag 20 of Wade is closed at a second end 25 and open at the other end, and has front and rear walls 21 and 22. The front and rear walls 21, 22 inherently have inner and outer surfaces.

Cover face cloth 60 of Wade appears to be attached at one of its ends to the open end of tote bag 20 (at 62) and at its other end to cover 12 (at 64). It does not appear that cover 12 is independently attached to tote bag 20, but only to cover face cloth 60. See FIGS. 4 and 5 of Wade.

Applicants' independent claim 15 recites that "a portion

of said inner surface of one of said front and rear walls of said carrying case [is] permanently attached to said sheet" (emphasis added). See applicants' two independent claims 15 and 25. Neither of the inner surface of Wade's front or rear walls 21 or 22 of tote bag 20 is attached to cover 12.

Applicants' independent claim 15 recites that the "carrying case [is] reversible from a transport and storage mode to a use mode by pulling said carrying case inside out". Wade's transparent and storage mode (see FIG. 2 of Wade) is the same as her use mode (see FIGS. 1 and 3-5 of Wade).

Applicants' claim 15 recites that the portion of the inner surface of one of the front or rear walls of the carrying case be permanently attached to the sheet "at a location inwardly of said first end of said sheet and between said first and second longitudinal edges of aid sheet".

The secondary reference of Hunt has been cited for its showing of an "envelope" 26 attached inwardly of the first end of his sheet 12. The examiner's position is that "[i]t would have been obvious in view of [Hunt] -- to make the [tote bag] of Wade attached inwardly of the first end of the sheet for the purpose -- of allowing it to better function as a pillow, should it be used in that manner".

Assuming it would have been obvious to modify Wade by moving her tote bag 20 to the position supposedly suggested by "envelope" 26 of Hunt, Wade's tote bag 20 would still be attached to cover 12 by means of cover face cloth 60. Hunt does not suggest

attaching Wade's cover 12 to a portion of the inner surface of one of front or rear walls 21, 22 to provide a tote bag 20 reversible from a transport and storage mode to a use mode by pulling the tote bag inside out, and there is no reason to do so suggested by the combination of Wade and Hunt.

Applicants' claim 15 recites that when said carrying case is reversed to its use mode, "the outer surface of said carrying case [forms] the inner surface of a pillow case (emphasis added).". There is no suggestion by Wade that her tote bag 20 is useful as a pillow case, and in the location shown in her drawings it could not be so used. Even if Wade's tote bag were moved to the location of envelope 25 of Hunt and used as a pillow case, it would be the inner surface of the tote bag forming the inner surface of the pillow case.

To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The limitations of claim 15 discussed above are not taught or suggested by the combination of Wade and Hunt. Therefore, it is submitted that independent claim 15 is nonobvious under 35 U.S.C. 103, and it is respectfully requested that the rejection of independent claim 15 as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt be reversed.

Claims 18, 19, 21 and 22 are ultimately dependent from independent claim 15. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Since independent claim 15 is submitted to be nonobvious for the reasons set forth above, it is respectfully requested that the rejection of dependent claims 18, 19, 21 and 22 as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt likewise be reversed.

(2) Claims 16, 17, and 25-27:

These claims stand rejected as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Silvestri.

In addition to containing all of the limitations of claim 15, these claims recite that the combination of claim 15 include "a slip cover pocket located at said first end of said sheet" (claims 16 and 25), plus "a second slip cover pocket located at said second end of said sheet" (claims 17 and 26).

The examiner states that "Silvestri teaches a slip cover pocket at an upper or first end of a sheet for exactly the same purpose as the instant invention" and that it "would have been obvious in view of Silvestri to incorporate a slip cover pocket in the upper end of the sheet of Wade--".

However, claims 16, 17, and 25-27 contain all of the limitations of claim 15, and Silvestri does not supply any of the deficiencies of the combination of Wade and Hunt discussed above relative to claim 15.

Since Silvestri does address nor supply the deficiencies of the combination of Wade and Hunt discussed above relative to independent claim 15, claims 16, 17, and 25-27 are likewise nonobvious over the combination of Wade, Hunt and Silvestri.

It is, therefore, respectfully requested that the rejection of claims 16, 17, and 25-27 as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt and Silvestri be reversed.

(3) Claim 20:

This claim stands rejected as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Battistella and Buhot et al.

Claim 20 is dependent from claim 18, and recites that "at least one pocket [is] located adjacent each of said longitudinal edges of said sheet" and that "said pockets are all located inwardly of said longitudinal edges of said sheet".

The examiner states that Buhot, Hunt and Battistella all teach a beach towel with pockets located inward of the edges.

However, claim 20 contains all of the limitations of claim 15, and neither of Buhot or Battistella (either alone or in combination) supply any of the deficiencies of the combination of Wade and Hunt discussed above relative to claim 15.

It is, therefore, respectfully requested that the rejection of claim 20 as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, Battistella and Buhot be reversed .

(4) Claim 23:

This claim stands rejected as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Terrazas.

Claim 23 is dependent from claim 15, and recites that the combination include "a waterproof sheet attached to the bottom side of said flexible sheet, said waterproof sheet being substantially the same size as said flexible sheet."

The examiner states that "Terrazas teaches a sheet with a waterproof layer for a similar purpose" and that it "would have been obvious -- to put a waterproof layer on the bottom of the flexible sheet of Wade --".

However, this claim contains all of the limitations of claim 15, and Terrazas does not supply the deficiencies of the combination of Wade and Hunt discussed above relative to claim 15.

It is, therefore, respectfully requested that the rejection of claim 23 as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt and Terrazas be reversed.

(5) Claim 24:

This claim stands rejected as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Battistella.

Claim 24 is dependent from claim 15 and additionally includes "a flap extending from said rear wall adjacent said open first end of said case, said flap adapted to be secured to said front wall of said case by fastener means when said sheet is

stuffed inside said case for transport and storage."

The examiner states that "Hunt teaches a flap 48 which extends from adjacent an o[pen first end of an analogous case" and that "Battistella teaches a flap 4 for a case 3 which extends from adjacent the opening."

However, claim 24 contains all of the limitations of claim 15, and Battistella does not supply the deficiencies of the combination of Wade and Hunt discussed above relative to claim 15.

It is, therefore, respectfully requested that the rejection of claim 24 as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt and Battistella be reversed and withdrawn.

(5) Claim 28:

This claim stands rejected as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, and further in view of Silvestri and Battistella.

Claim 28 is dependent from independent claim 25. Independent claim 25 contains all of the limitations of independent claim 15. In addition to the limitations of parent claim 25, claim 28 additionally includes "a flap extending from said rear wall adjacent said open first end of said case, said flap adapted to be secured to said front wall of said case by fastener means when said sheet is stuffed inside said case for transport and storage."

The examiner states that "Hunt teaches a flap 48 which extends from adjacent an o[pen first end of an analogous case" and

that "Battistella teaches a flap 4 for a case 3 which extends from adjacent the opening." Silvestri was cited for the same reason it was cited against parent claim 25, discussed above.

However, claim 28 contains all of the limitations of claim 25 (which contains all of the limitations of claim 15), and Battistella does not supply the deficiencies of the combination of Wade, Hunt and Silvestri discussed above relative to claim 15.

It is, therefore, respectfully requested that the rejection of claim 28 as being unpatentable under 35 U.S.C. 103(a) over Wade in view of Hunt, Silvestri and Battistella be reversed.

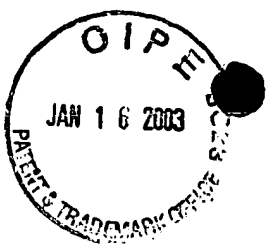
8. Conclusion:

For the reasons set forth above, it is respectfully requested that this honorable Board of Patent Appeals and Interferences reverse all of the outstanding rejections of claims 15-28, and return the application to the examiner for action consistent with its decision.

Respectfully submitted,



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Registration No. 22,437



APPENDIX A

A clean copy of appealed claims 15-28:

15. A combination of a flexible sheet usable as a towel or blanket and a carrying case integral with said flexible sheet comprising:

a flexible, rectangular sheet having first and second ends and first and second longitudinal edges; and

a flexible carrying case reversible from a transport and storage mode to a use mode by pulling said carrying case inside out, said carrying case having first and second ends and front and rear walls, said carrying case being open at said first end and closed at said second end, said front and rear walls of said carrying case in said transport and storage mode each having an outer surface and an inner surface, a portion of said inner surface of one of said front and rear walls of said carrying case being permanently attached to said sheet at a location inwardly of said first end of said sheet and between said first and second longitudinal edges of said sheet, said carrying case wholly containing said sheet within said carrying case in said transport and storage mode, said sheet being wholly deployed outside of said carrying case in said use mode with said open first end of said carrying case facing one of said longitudinal edges of said sheet and with said outer surface of said carrying case forming the inner surface of a pillow case.

20/

16. The combination of claim 15 including a slip cover pocket located at said first end of said sheet, said slip cover being configured to be placed over that end of a lounge chair adapted to receive a user's torso.

17. The combination of claim 16 including a second slip cover pocket located at said second end of said sheet, said second slip cover pocket being configured to be placed over the other end of said lounge chair.

18. The combination of claim 15 including at least one pocket located adjacent each of said longitudinal edges of said sheet.

19. The combination of claim 18 wherein said pockets are all located substantially on said longitudinal edges of said sheet and extend away from said sheet.

20. The combination of claim 18 wherein said pockets are all located inwardly of said longitudinal edges of said sheet.

21. The combination of claim 15 including carrying means attached to said case adjacent said open end.

22. The combination of claim 21 wherein said carrying means is a strap.

23. The combination of claim 15 including a waterproof sheet attached to the bottom side of said flexible sheet, said waterproof sheet being substantially the same size as said flexible sheet.

24. The combination of claim 15 including a flap extending from said rear wall adjacent said open first end of said case, said flap adapted to be secured to said front wall of said case by fastener means when said sheet is stuffed inside said case for transport and storage.

25. A combination of a flexible sheet usable as a towel or blanket and a carrying case integral with said flexible sheet comprising:

 a flexible, rectangular sheet having first and second ends and first and second longitudinal edges; and

 a flexible carrying case reversible from a transport and storage mode to a use mode by pulling said carrying case inside out, said carrying case having first and second ends and front and rear walls, said carrying case being open at said first end and closed at said second end, said front and rear walls of said carrying case in said transport and storage mode each having an outer surface and an inner surface, a portion of said inner surface of one of said front and rear walls of said carrying case being permanently attached to said sheet at a location inwardly of said first end of said sheet and between said first and second longitudinal edges of said sheet, said carrying case wholly containing said sheet within said carrying case in said transport

20 and storage mode, said sheet being wholly deployed outside of said carrying case in said use mode with said open first end of said carrying case facing one of said longitudinal edges of said sheet and with said outer surface of said carrying case forming the inner surface of a pillow case;

a slip cover pocket located at said first end of said sheet, said slip cover being configured to be placed over that end of a lounge chair adapted to receive a user's torso; and

at least one pocket located adjacent at least one of said longitudinal edges of said sheet.

26. The combination of claim 25 including a second slip cover pocket located at said second end of said sheet, said second slip cover pocket being configured to be placed over the other end of said lounge chair.

27. The combination of claim 25 including carrying means attached to said case adjacent said open end.

28. The combination of claim 25 including a flap extending from said rear wall adjacent said open first end of said case, said flap adapted to be secured to said front wall of said case by fastener means when said sheet is stuffed inside said case for transport and storage.

106/610

United States Patent [19]
Wade

[11] Patent Number: Des. 359,411
[45] Date of Patent: ** Jun. 20, 1995

[54] COMBINED FITTED LOUNGE CHAIR
COVER, FACE CLOTH AND TOTE BAG

[76] Inventor: LaRee Wade, 8615C SW. Curry Dr.,
Wilsonville, Oreg. 97070

[**] Term: 14 Years

[21] Appl. No.: 12,748

[22] Filed: Sep. 7, 1993

[52] U.S. Cl. D6/610; D3/233

[58] Field of Search D6/610, 595, 596;
D3/233; 297/229, 228.1; 383/4; 150/158

[56] References Cited

U.S. PATENT DOCUMENTS

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OTHER PUBLICATIONS

The Tote 'N Towel towel and tote bag, sold prior to
Sep. 7, 1993.

Primary Examiner—Lisa P. Lichtenstein
Attorney, Agent, or Firm—Klarquist Sparkman
Campbell Leigh & Whinston

[57] CLAIM

The ornamental design for a combined fitted lounge
chair cover, face cloth and tote bag, as shown and de-
scribed.

DESCRIPTION

FIG. 1 is a perspective view of a combined fitted lounge
chair cover, face cloth and tote bag shown in use, the
broken-line showing of a lounge chair being for illustra-
tive purposes only and forming no part of the claimed
design;

FIG. 2 is a greatly enlarged perspective view of the
cover of FIG. 1 when stored in the transport pouch
portion with the drawstring closure pulled tight;

FIG. 3 is an enlarged top plan view of the cover of FIG.
1 in a fully extended, flat position;

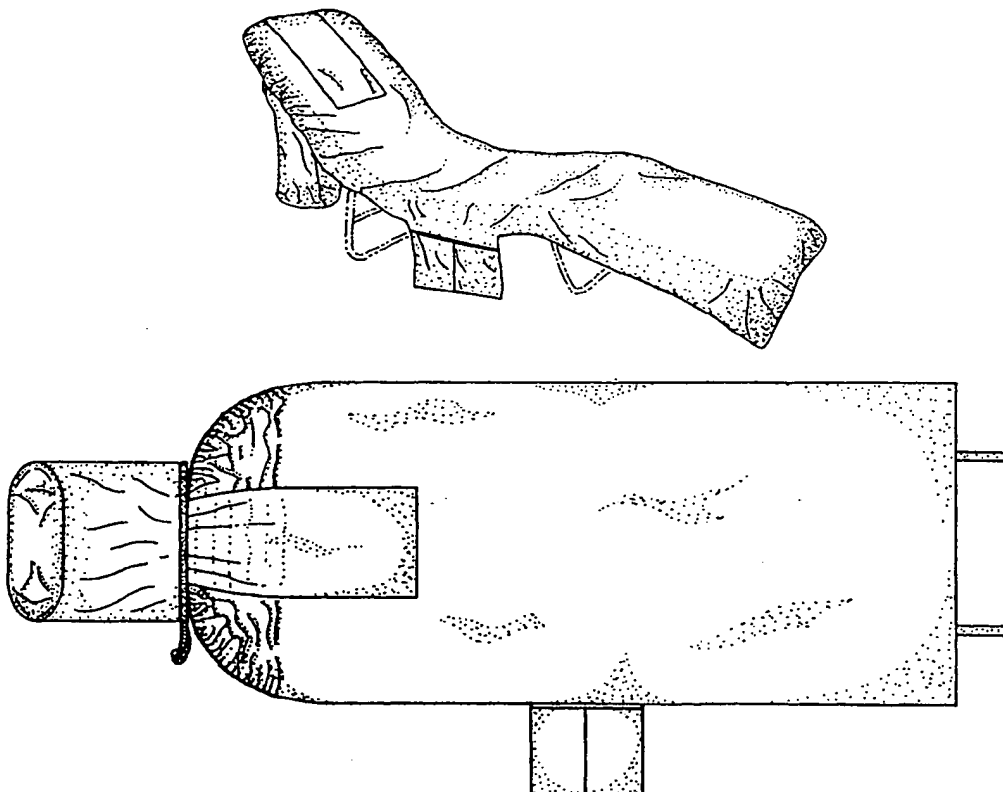
FIG. 4 is an enlarged left side elevational view thereof;

FIG. 5 is an enlarged right side elevational view
thereof;

FIG. 6 is an enlarged bottom plan view thereof;

FIG. 7 is an enlarged head-end elevational view
thereof; and,

FIG. 8 is an enlarged foot-end elevational view thereof.



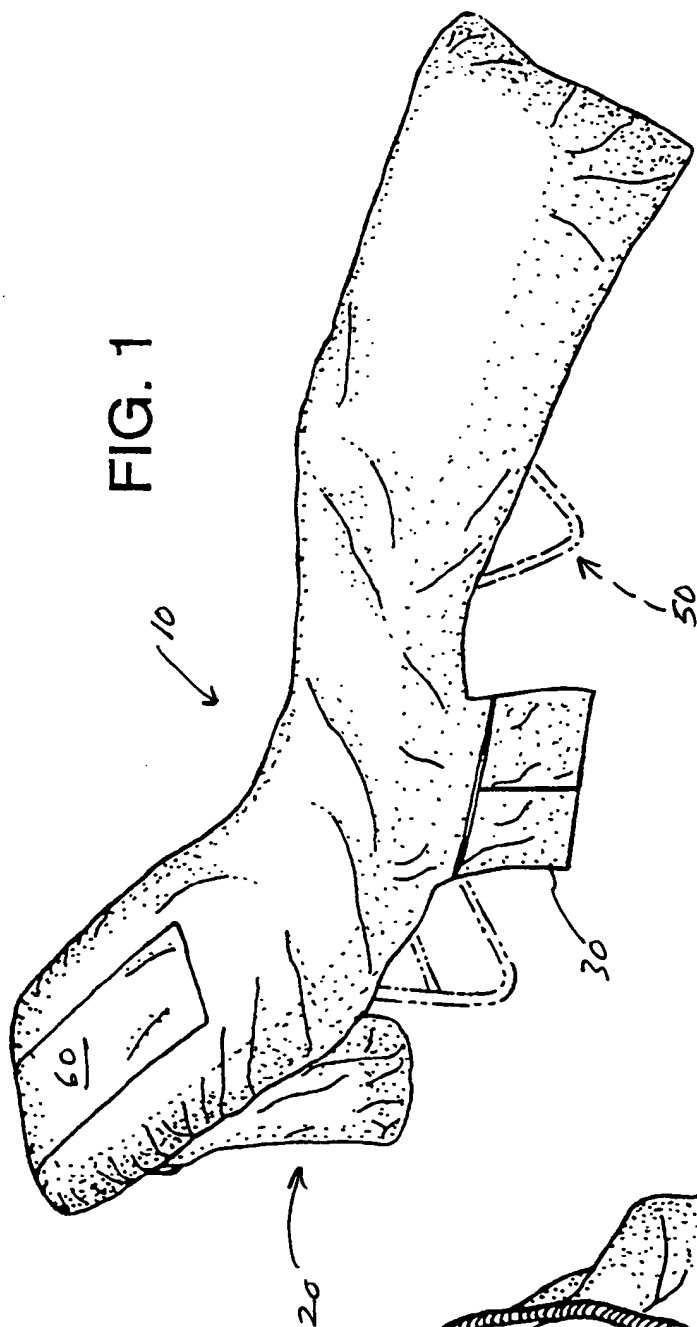
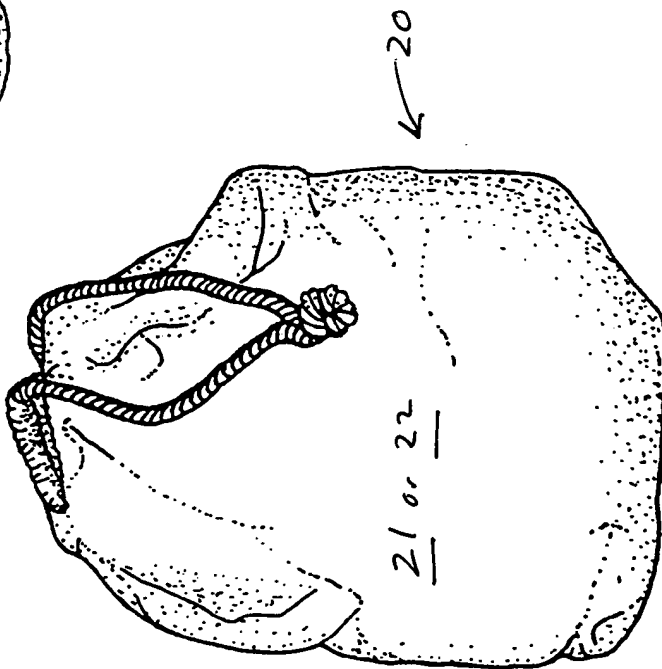


FIG. 2



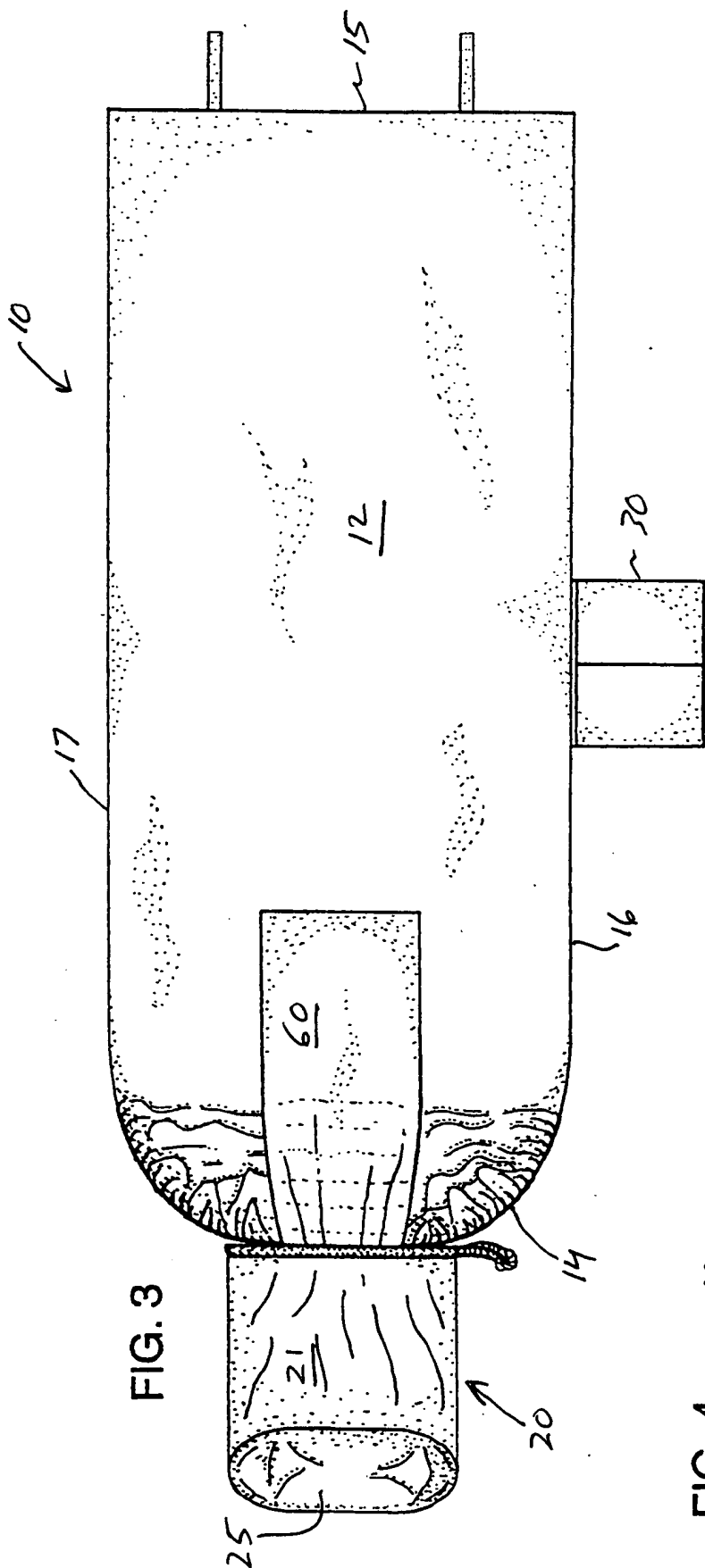


FIG. 3

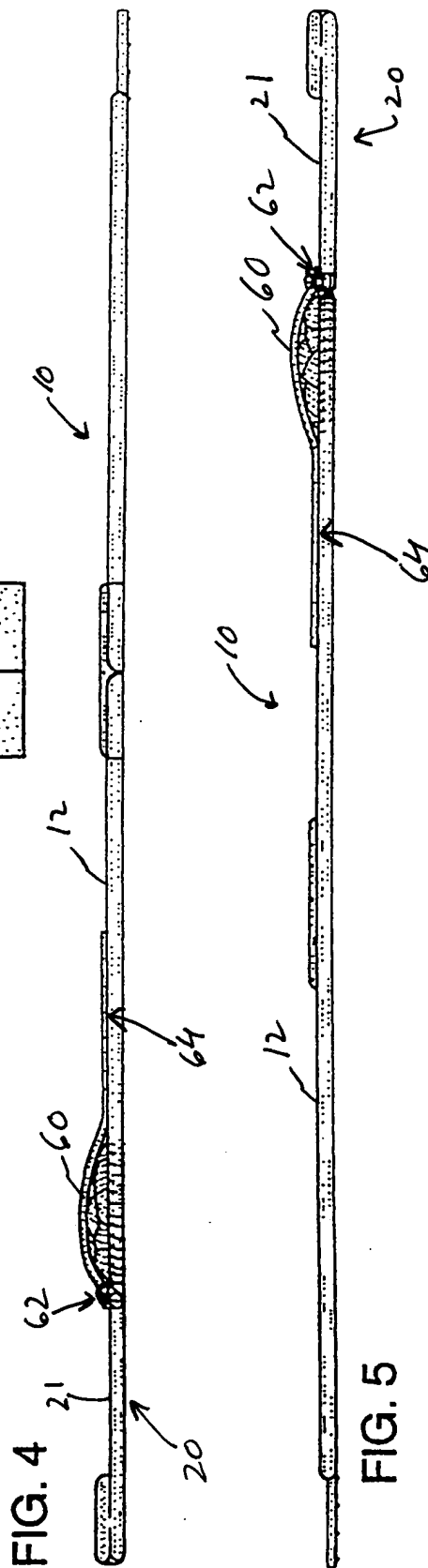


FIG. 4

FIG. 5

